Supreme Court, U.S.
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CLERK

No. 99-1541

In The

Supreme Court of the United States

JAN FRANCIS BECKER,

Petitioner,

vs.

DOROTHY MARIE DAWSON BECKER, THE HONORABLE JUDGE THOMAS D. WHITE, AND THE HOLMES COUNTY CHILD SUPPORT ENFORCEMENT AGENCY,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Ohio

BRIEF IN OPPOSITION

RONALD L. COLLINS
Counsel of Record
RON COLLINS LAW OFFICE
Ohio Supreme Court
Registration # 0026037
135 Second St., SE
New Philadelphia, Ohio 44663
Phone: (330) 602-7767
Fax: (330) 602-0123
Attorney for Respondent
The Honorable Judge
Thomas D. White

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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STATEMENT OF FACTS

Petitioner Becker, on page 11 of his petition, says: "It is apparent to counsel that some of the causes of action brought by Mr. Becker were frequent and may even be considered frivolous."

On page 8, the petitioner refers to filing *pro se* actions against Judge White. It should be pointed out that some of those actions had been filed prior to the time Judge White presided over petitioner's divorce proceedings and granted the divorce, without objection to Judge White's doing so.

The Court should also know that Judge White is the only Common Pleas Judge in Holmes County because the limited population of Holmes County only allows for a single judge.

On April 28, 2000, the United States Court of Appeals for the Sixth Circuit affirmed the order of the District Court which held that petitioner's complaint did not contain allegations reasonably suggesting that petitioner had a valid federal claim against any of the named defendants, including Judge White. The Sixth Circuit Court of Appeals found the District Court's dismissal for failure to state a claim to be proper, referring to petitioner's "vague and conclusory allegations, unsupported by material facts."

This decision represents a significant, relevant, and material factual occurrence intervening since the filing of the petition in this matter.

ARGUMENT

This Court should deny the petition because Chief Justice Thomas Moyer of the Ohio Supreme Court properly considered petitioner's affidavit of recusal and properly denied it.

The line of Ohio cases cited by petitioner in his petition and relied upon by Chief Justice Moyer to deny recusal stand for the proposition that a citizen before a duly-authorized judge cannot "create" prejudice through that citizen's own action whether that be through the filing of frivolous lawsuits or frivolous disciplinary actions. Referring to the timing of the actions as different is an attempt at distinguishing without a difference.

To say that the Court has not considered this issue is disingenuous. As pointed out in the petition *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986) established the rule that a disqualifying interest must be "direct, personal, substantial (and) pecuniary." In *Lavoie, supra,* there pretty clearly was a pecuniary interest. The filing of a frivolous lawsuit, while it may certainly be annoying, does not give a judge a direct, personal, substantial, and certainly not a pecuniary interest in the case before him.

There is no indication that Judge White has a predisposition as to how to decide petitioner's motion for modification of visitation, and nothing to indicate that Judge White would make a decision other than based solely upon the merits of what would be presented in Court.

Petitioner contends the denial of his affidavit of recusal by Chief Justice Moyer without a hearing violates Due Process. Petitioner misapprehends in his claim that

the consideration deprived him of "life, liberty, or property." There is no property interest (the only possibility of the three) in having or not having a particular judge hear one's case. Many such proceedings happen without hearings. Petitioner had no due process right to a hearing upon his affidavit of recusal.

Respectfully submitted,

RONALD L. COLLINS
RON COLLINS LAW OFFICE
Ohio Supreme Court Registration
#0026037
135 Second St., SE
New Philadelphia, Ohio 44663
Phone: (330) 602-7767
Fax: (330) 602-0123
Attorney for Respondent
The Honorable Judge
Thomas White

APPENDIX A

No. 99-3811

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAN BECKER, Plaintiff-Appellant, v. WILLIAM J. CLINTON, President, et al., Defendants-Appellees.	)	ORDER (Filed Apr. 28, 2000)

Before: RYAN and BOGGS, Circuit Judges; DUGGAN, District Judge.*

Jan Becker, an Ohio resident proceeding pro se, appeals a district court order dismissing his complaint brought pursuant to 42 U.S.C. § 1983. This case has been referred to a panel of the court pursaunt to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On April 1, 1999, Becker filed a complaint, with filing fee, naming President William Jefferson Clinton and twenty-seven other defendants. The defendants included city, county, state, and federal law enforcement agencies, legal service companies, judges, court employees, and the United Way. Becker alleged that the defendants conspired

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*The Honorable Patrick J. Duggan, United States District Judge for the Eastern District of Michigan, sitting by designation.

to incarcerate him and deprive him of his civil rights in order to conceal a conspiracy to engage in numerous clandestine actions and a pattern of corruption. Becker filed an amended complaint on April 19, 1999. He alleged that he was refusing to file a federal tax return because officers of the Internal Revenue Service, the Securities and Exchange Commission, and the Treasury Department used the information to conspire against him. The district court ordered Becker to file an amended complaint setting forth a valid federal claim. Becker filed a second amended complaint on May 6, 1999. He claimed that county officials conspired to remove his children from his custody, incarcerate him, and force him to sell his farm, all in violation of various federal laws and Amendments to the United States Constitution. In an order entered May 19, 1999, the district court held that the complaint did not contain allegations reasonably suggesting that Becker had a valid federal claim against any of the named defendants.

In his timely appeal, Becker repeats and builds upon his conspiracy theories.

Upon de novo review, we conclude that the district court properly dismissed Becker's action for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996). First, the district court complied with *Tingler v. Marshall*, 716 F.2d 1109, 1111-12 (6th Cir. 1983), by: (1) permitting the amended complaint to be served on the defendants; (2) notifying the parties of its intent to dismiss the complaint; (3) giving Becker a chance to amend his complaint; (4) giving the defendants a chance to respond; and (5)

stating its reasons for the dismissal. Second, even construing liberally Becker's pro se complaint, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam), his vague and conclusory allegations, unsupported by material facts, are not sufficient to state a conspiracy claim under § 1983. *See Kensu v. Haigh*, 87 F.3d 172, 175-76 (6th Cir. 1996); *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987).

For the foregoing reasons, we affirm the district court's order. Rule 34(j)(2)(C). Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Clerk